

City of Lafayette Staff Report

To: City Council

From: Mike Moran, Associate Engineer

Date Written: June 22, 2009

Meeting Date: July ²⁷~~13~~, 2009

Subject: 811 Topper Lane – Request for Fence Encroachment into the City Right-of-Way

Introduction

Bradford Agler owns the property at 811 Topper Lane. Mr. Agler is requesting permission to construct a 32 inch picket fence to replace an existing 6 foot tall redwood fence. This work will require an amendment of an existing encroachment agreement made between the City and the previous owners for the existing redwood fence (approved in 2005). Staff recommends approval of the amendment.

Discussion

The property owner wishes to replace an existing 6 foot tall redwood fence with a new 32 inch high picket fence. The attached plan (Figure 1) shows the location of the improvements relative to the right-of-way line and the existing edge of pavement. The existing redwood fence is approximately 3 feet from the existing edge of pavement on Topper Lane and encroaches approximately 8 feet into the right-of-way. The proposed picket fence would be approximately 8 feet from the existing edge of pavement on Topper Lane and encroaches approximately 3 feet into the right-of-way. Figure 2 shows a dimensioned detail for the 32 inch picket fence. In examining the site, the existing fence (Figures 3 and 4) does not pose a sight distance or other public safety concern at this time. Since the new proposed fence will be lower and further away from the edge of the road, staff does not expect the new fence to pose a sight distance or other public safety concern.

The City does not have plans to widen Topper Lane or to install improvements along the edge of the road in the near future. The property owner understands that he is responsible for removing the fence if deemed necessary by the City. Based on these considerations,

staff recommends approval of this request for amendment. All prior conditions of approval for the original encroachment agreement will still apply.

Fiscal Impact

None

Recommendation

It is recommended that the City Council approve the encroachment into the City right-of-way along 811 Topper Lane and authorize the Mayor to execute an amendment to the existing encroachment agreement with the applicant.

SITE PLAN

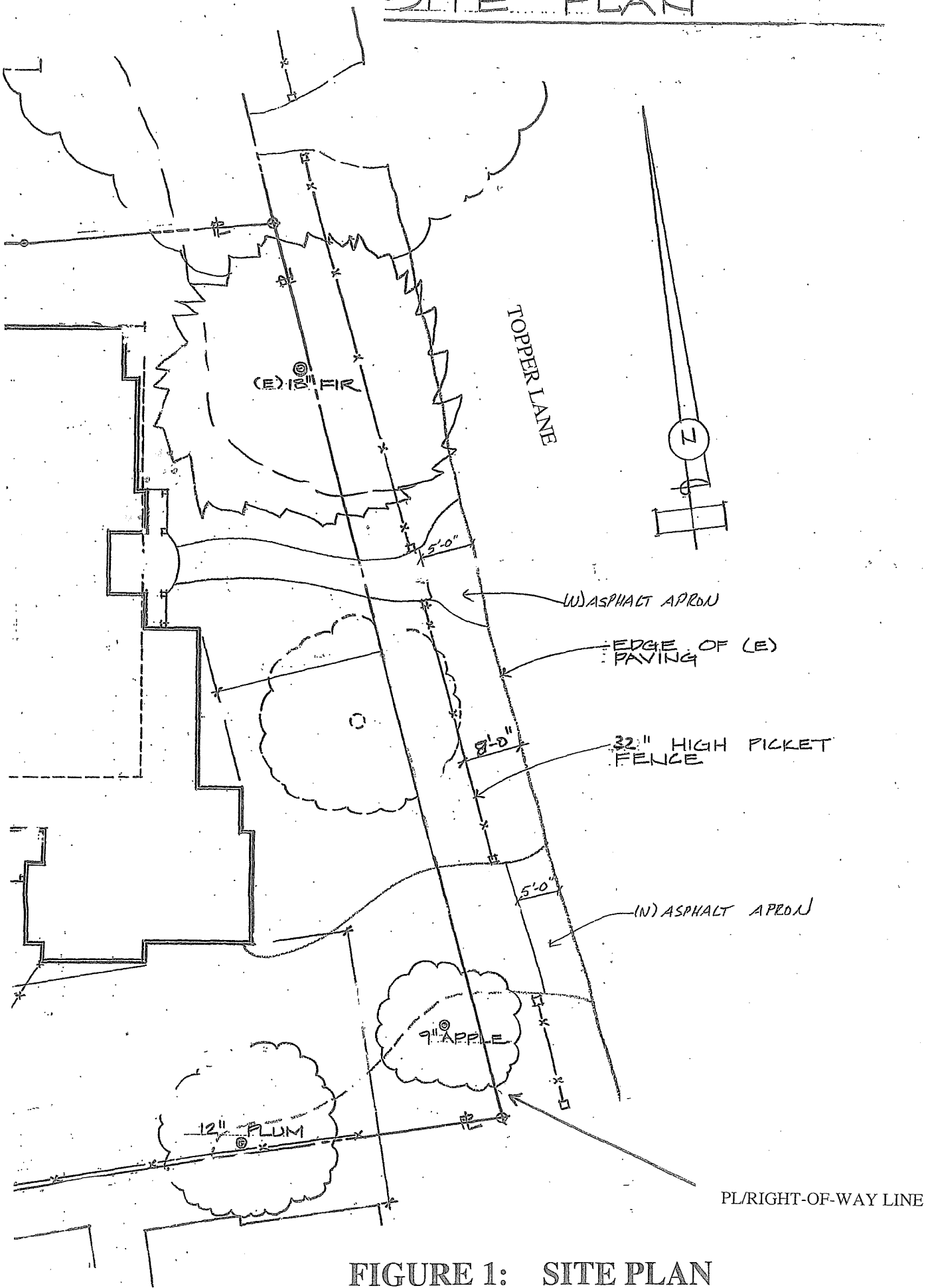


FIGURE 1: SITE PLAN

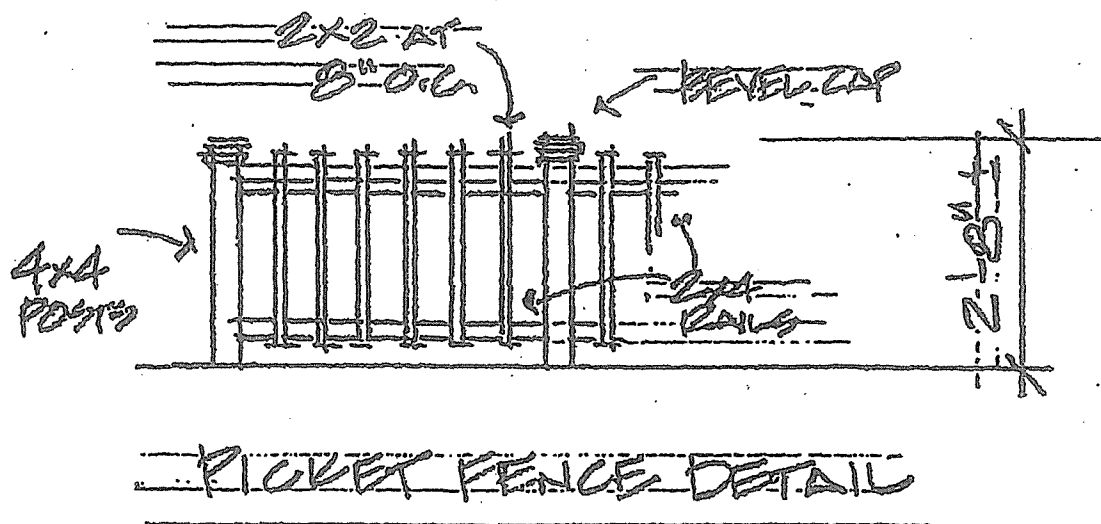


FIGURE 2: PICKET FENCE DETAIL.

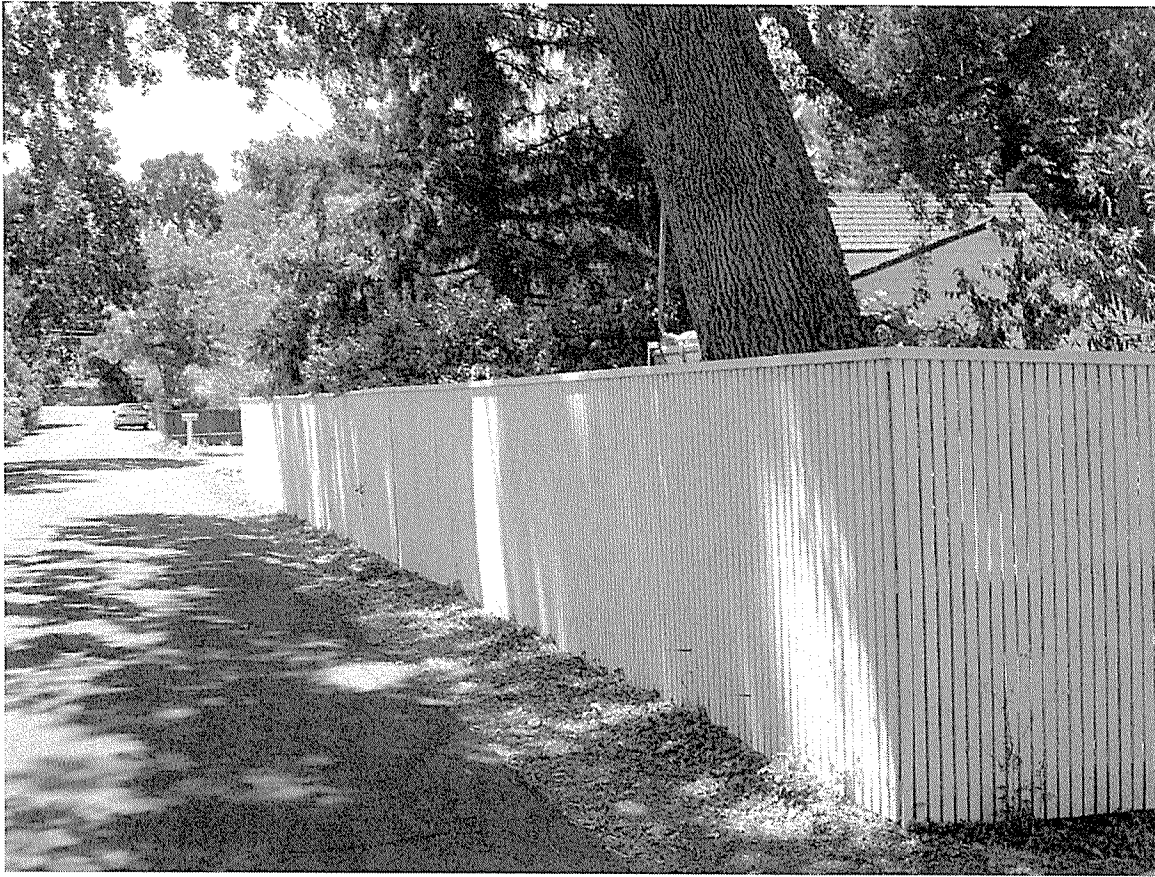


FIGURE 3: EXISTING REDWOOD FENCE LOOKING SOUTH



FIGURE 4: EXISTING REDWOOD FENCE LOOKING NORTH

When Recorded Return To:)
)
City Clerk)
City of Lafayette)
3675 Mt. Diablo Blvd., Suite 210)
Lafayette, CA 94549)

AGREEMENT

Encroachment of a 32 inch picket fence within the Public Right-of-Way along 811 Topper Lane.

This Agreement is entered into on July 13, 2009 between Bradford Agler and the City of Lafayette, a municipal corporation "City".

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 811 Topper Lane Lafayette, California, APN 234-062-010 ("the Property"). The Property is more particularly described in Exhibit "A-1."

B. Property Owner seeks an encroachment permit to construct a 32 inch picket fence which will encroach into the public right-of-way along 811 Topper Lane. In connection with his request for an encroachment permit, Property Owner has submitted plans to the City for the construction and the placement of a 32 inch picket fence.

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of a 32 inch picket fence

Property Owner is permitted to place a 32 inch picket fence which substantially conforms to the plans submitted to the City described in paragraph B above, to encroach into the public right-of-way along 811 Topper Lane, subject to obtaining any building permit which may otherwise be required by the Uniform Building Code.

This encroachment permit is not a building permit and does not grant permission to construct the plan without a separate building permit, if required by the Uniform Building Code adopted by reference by the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to by the placement, permitting or maintenance of the 32 inch picket fence within the right-of-way as

installed and maintained by the Property Owner. Property Owner also assumes the risk of damage to the 32 inch picket fence installed in the right-of-way.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the 32 inch picket fence, permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the “taking” of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a “taking” including reasonable attorney’s fees costs, alleged to have resulted from the location of the 32 inch picket fence within the right-of-way area by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least \$320,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the 32 inch picket fence. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give the City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit “A-1”.

5. Duty to Maintain

Property Owner is responsible for maintaining the 32 inch picket fence described in Paragraph 1. Property Owner shall maintain the 32 inch picket fence in a safe and attractive condition as an encroachment within the City’s right-of-way area. The 32 inch picket fence may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the 32 inch picket fence the City may give written notice of the deficiency to Property Owner who shall have 20 days to make necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain the 32 inch picket fence, or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the 32 inch picket fence, however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the encroachment. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the 32 inch picket fence which encroaches after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A-1" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the 32 inch picket fence. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the 32 inch picket fence described in paragraph 1, which encroaches in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Notices to Property Owner shall be addressed:

Bradford Agler
93 Tarry Lane
Orinda, CA 94563

When the Property Owner(s) cease to be the owner(s) they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement.

11. Miscellaneous Terms and Provisions.

- (a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.
- (b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.
- (c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.
- (d) Property Owner appoints City it's attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the 32 inch picket fence.
- (e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
- (f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches to Land.

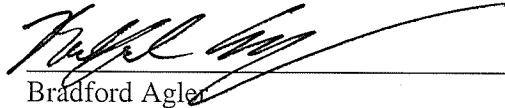
This Agreement pertains to and runs with the real property described in Exhibit "A-1". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

PROPERTY OWNER(S)

Steven B. Falk, City Manager



Bradford Agler

* Notarial Acknowledgment Required.

ATTEST:

Joanne Robbins, City Clerk

EXHIBIT "A-1"

LEGAL DESCRIPTION

ADJUSTED 811 TOPPER LANE

REAL PROPERTY LOCATED IN THE CITY OF LAFAYETTE, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, BEING A PORTION OF THE RANCHO LAGUNA DE LOS PALOS COLORADOS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED "BIRDAVEN GARDENS", FILED JANUARY 22, 1945, IN MAP BOOK 27, PAGES 43 AND 44, CONTRA COSTA COUNTY RECORDS; THENCE NORTH 69°57'30" WEST, 45.75 FEET TO THE WEST LINE OF TOPPER LANE, BEING THAT PARCEL OF LAND DESCRIBED IN THE DEED TO CONTRA COSTA COUNTY, RECORDED NOVEMBER 4, 1949, IN BOOK 1458 OF OFFICIAL RECORDS, PAGE 80; THENCE NORTH 00°05' EAST, ALONG SAID WEST LINE, 224.45 FEET TO A POINT THEREON 84 FEET SOUTHERLY OF THE SOUTH LINE OF THE PARCEL DESCRIBED IN THE DEED TO WILLIAM A. KALLIO, ET UX, RECORDED JUNE 30, 1950, IN BOOK 1585 OF OFFICIAL RECORDS, PAGE 506, SAID POINT BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE SOUTH 00°05' WEST, ALONG SAID WESTLINE, 110 FEET; THENCE NORTH 83°41'40" WEST, LEAVING SAID WEST LINE, 95.08 FEET; THENCE NORTH 00°16' WEST, 73 FEET; THENCE NORTH 78°57'10" WEST, 81.13 FEET TO THE EAST LINE OF THE THIRD PARCEL DESCRIBED IN THE DEED TO ROSA GHIGLIONE, RECORDED NOVEMBER 20, 1926, IN BOOK 62 OF OFFICIAL RECORDS, PAGE 132; THENCE NORTH 00°55' WEST, ALONG SAID EAST LINE, 53.96 FEET; THENCE SOUTH 75°22'50" EAST, LEAVING SAID EAST LINE, 150.78 FEET; THENCE SOUTH 80°37'20" EAST, 30 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL IS SHOWN ON EXHIBIT "B", ATTACHED HERETO AND MADE APART HEREOF.

END OF DESCRIPTION.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa

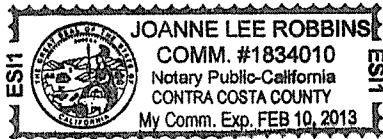
On July 10, 2009 before me, Joanne Lee Robbins, Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared Bradford Agler

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person ~~(s)~~ whose name ~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity ~~(ies)~~, and that by his/~~her/their~~ signature ~~(s)~~ on the instrument the person ~~(s)~~, or the entity upon behalf of which the person ~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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OF SIGNER

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